

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:

MICH'S MACCS, LLC,

Chapter 11

Case No. 21-11567 (DSJ)

Debtor.

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**ORDER (I) APPROVING BIDDING PROCEDURES, (II)
APPROVING THE FORM AND MANNER OF NOTICE, AND
(III) SCHEDULING AN AUCTION AND SALE HEARING**

Upon the motion (the "Motion") of Mich's Maccs, LLC, the above captioned debtor and debtor-in-possession (the "Debtor"), by its attorneys, Kirby Aisner & Curley LLP, seeking entry of an Order (i) establishing bidding procedures to govern the sale (the "Sale") of substantially all of the Debtor's tangible and intangible property (the "Assets"), (ii) approving the form and manner of notice of the Sale, (iii) scheduling an auction (the "Auction"), and (iv) scheduling a hearing to approve the Sale (the "Sale Hearing"); and a hearing having been held to consider the Motion on March 17, 2022, and upon due deliberation thereon, and for the reasons states on the record in open Court this same day,

IT IS HEREBY ORDER:

1. The Motion is granted to the extent set forth herein. All objections to the relief requested in the Motion ~~that have not~~ been withdrawn, waived, or settled as announced to the Court at the hearing on this Motion or by stipulation filed with the Court, ~~are overruled.~~

[DSJ 3/18/2022]

2. The Debtor is authorized to conduct an Auction in accordance with the Bidding Procedures annexed hereto as **Exhibit "A"** (the "Bidding Procedures") which Bidding

Procedures are hereby approved.

3. The sale of the Debtor's Assets shall explicitly not include the Debtor's customer lists, to the extent one exists.

4. The Term Sheet with Chenies Investor LLC (which is annexed to the Motion as Exhibit A) shall be amended to reflect that "All post-petition liabilities, debts and accounts payable shall be assumed by Buyer. Except as set forth herein, Buyer is not agreement to, nor assuming, any of the ~~bankruptcy estate~~ *Debtor's pre-petition* liabilities."

5. Auction Advisors, as Auctioneer to the Debtor, shall immediately (i) post notice of the Auction on open as well as subscriber-based websites, (ii) create a custom webpage and marketing materials, (iii) set up an online data room, (iv) launch a social media campaign, including FaceBook & LinkedIn to market the Auction, (v) schedule physical inspections/showing of the Assets, if requested, and (vi) implement a direct marketing campaign by reaching out to its industry contacts, investors and others potential buyers still be to be resourced

6. The deadline for becoming a Qualified Bidder, as defined in the Bidding Procedures, shall be at the commencement of the Auction

7. The Auction will "open" on **April 26, 2022 at 1:00 pm. (prevailing Eastern Time)** and be held in real time via an online auction over zoom. Instructions for participating in the Auction will be transmitted via email from Auction Advisors to (i) Qualified Bidders, (ii) Debtor's counsel, (iii) the Office of the U.S. Trustee, and (iv) any interested parties in this Chapter 11 Case requesting permission to monitor the Auction (such parties shall not be permitted to bid unless they have become a Qualified Bidder prior to the commencement of the Auction). The Auction shall be recorded, with the recording to be made available to the Court, the Office of the

U.S. Trustee, or any other party in interest that requests such recording in writing. Following the closure of the Auction, Auction Advisors shall submit to the Debtor the Report of Sale for filing with the Bankruptcy Court.

8. Chenies Investor LLC shall be deemed a Qualified Bidder and permitted to credit bid at the Auction in the amount of \$22,500.

9. The Debtor shall determine whether a submitted bid is a Qualified Bid. The Debtor shall designate the Successful Bidder and Back-up Bidder at the conclusion of the Auction. The deposits of all Qualified Bidders, other than the Successful Bidder and the Backup Bidder, shall be returned to the respective Qualified Bidder no later than two (2) business days following the conclusion of the Auction.

10. Counsel to the Debtor shall file with the Bankruptcy Court a Report of Auction no later than April 28, 2022 at 10:00 a.m. (EST), which report shall indicate, *inter alia*, the bidders in attendance at the Auction and, the identity of the Successful Bidder and amount of bid, and the identity of the Back-up Bidder and amount of bid, if any, and include the Sale Agreement with the Successful Bidder.

11. The Sale Hearing shall be held before the Honorable David S. Jones, United States Bankruptcy Judge, Southern District of New York (Manhattan Division) on **May 10, 2022 at 10:00 a.m. (prevailing Eastern Time)** (the “Sale Hearing”). In light of the COVID-19 pandemic, pursuant to SDNY General Order M-543, all hearings will be conducted telephonically pending further order of this Court. This hearing shall take place virtually using *ZOOM for Government*. Parties that wish to appear at the hearing are required to register their appearance utilizing the Electronic Appearance Portal <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> located on the Court’s website. Parties are advised to check the Court Calendar the day before for updated

call-in times.

12. At the Sale Hearing the Court will consider the results of the Auction, the proposed Sale, and any objections thereto, and may authorize the Sale and/or grant such other related relief as may be deemed necessary or proper by the Court.

13. Objections, if any, to the Sale must be in writing, filed with the Bankruptcy Court at the court's website www.nysb.uscourts.gov (a password and login are required), with a copy delivered directly to Chambers, and served upon Kirby Aisner & Curley LLP, 700 Post Road, Suite 237, Scarsdale, New York 10583, Attn: Julie Cvek Curley, Esq., so as to be filed and served no later than **5:00 p.m. on May 3, 2022** (the "Objection Deadline").

14. The gross proceeds of the Sale shall be held in escrow by the Debtor's counsel pending further order of this Court.

15. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. To the extent that this Order is inconsistent with any prior order or pleading with respect to the proposed sale transaction, the terms of this Order shall govern.

17. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

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18. The Debtor shall serve this Order via first class mail and/or email, if possible, along with the Bidding Procedures upon: (i) the Office of the U.S. Trustee; (ii) all taxing authorities; (iii) all known creditors of the Debtor; (iv) all entities known or reasonably believed to have asserted a lien, claim, interest, or encumbrance in the Assets, and (v) all parties that have requested notice pursuant to Bankruptcy Rule 2002, within one (1) day after entry of this Order.

Dated: New York, New York
March 18, 2022

s/ David S. Jones
HONORABLE DAVID S. JONES
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT A

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the sale by Mich’s Maccs, LLC the Debtor-in Possession (the “Debtor”) in *In re Mich’s Maccs, LLC*, S.D.N.Y. Case # 21-11567 (dsj) of the tangible and intangible property listed below (the “Assets”):

Description
<i>Equipment & Baking Supplies</i>
(2) Selmi Plus Legend 3 Phase tempering machines
1 Enrobing Line for Ghana
1 Deighton Formatic Cookie Machine
1 Deighton Retail Drum – custom
150 used sheet pans
1 M’old Art Chocolate warmer
100 Silpats - silicone sheets
<i>Inventory</i>
Inventory Maccs (16,500 pienes x .12)
Ingredients/perishables
Coconut
Packing Supplies
Mugs
<i>Intangibles</i>
Recipes
Website https://michellesmaccs.com
Social Media handles (FaceBook, Instagram)
Goodwill

Any transfer of the Debtor’s rights, title and interests in and to the Assets (“Sale”) shall be subject to approval by the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) pursuant to Sections 363 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”); and any Sale shall be subject to such other closing conditions and other terms and conditions as are set forth in the Terms & Condition of Sale (defined below).

NOTICE AND SOLICITATION OF BIDS

Within three (3) Business Days following the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtor shall provide notice of the proposed Sale, the Bidding Procedures, the time and place of the Auction (as defined below), the time and place of the Sale Hearing (as defined below), and the objection deadline for the Sale Hearing to potential bidders who may wish to participate in the Auction.

Any person or entity (each, a “Bidder”) that desires to participate in the auction of the Assets (the “Auction”) must be a Qualified Bidder (as defined below).

QUALIFIED BIDS

To be considered a Qualified Bidder (a “Qualified Bidder”), each a bidder must comply with all the following requirements:

- (a) they must have executed the attached Terms & Conditions of Sale attached as Schedule 1 hereto (the “Terms & Conditions”) prior to the Auction; and
- (b) having deposited into the escrow account of seller’s attorney a non-refundable deposit of no less than \$5,000 (refundable no later than two (2) business days following the conclusion of the Auction in the case the bidder is not determined to be the Successful Bidder or Back-up Bidder).

AUCTION

At the Auction, Auction Advisors (the “Auctioneer”), will conduct an auction (the “Auction”) of the Assets and the Debtor shall select the highest or best bid for the Assets (the “Successful Bid”). The Auction shall take place via a zoom meeting **on April 26, 2022 at 1:00 p.m. (prevailing Eastern time)**. Instructions for participating in the Auction will be transmitted via email from Auction Advisors to (i) Qualified Bidders, (ii) Debtor’s counsel, (iii) the Office of the U.S. Trustee, and (iv) any interested parties in this Chapter 11 Case requesting permission to monitor the Auction (such parties shall not be permitted to bid unless they have become a Qualified Bidder prior to the commencement of the Auction). The Auction shall be recorded, with the recording to be made available to the Court, the Office of the U.S. Trustee, or any other party in interest that requests such recording in writing.

The Debtor may conduct the Auction in any manner and upon any terms and conditions satisfactory to the Court and consistent with these Bidding Procedures, that will achieve the maximum value for the Assets.

At the conclusion of the Auction, the Seller shall submit the Successful Bid to the Court at the Sale Hearing (as defined below), for entry of a Sale Approval Order. Any Bid that fails to comply with the Bidding Procedures or any other procedures established at the Auction may be refused.

SELECTION OF SUCCESSFUL BID

Following the conclusion of the Auction on April 26, 2022 at 1:00 p.m. (prevailing Eastern Time), the Debtor will (a) review and evaluate each bid, (b) identify the highest or otherwise best offer for the Assets received at the Auction (such bid, the “Successful Bid” and the bidder making such bid, the “Successful Bidder”) and (c) identify the second highest or otherwise best offer for the Assets received at the Auction (such bid, the “Back-Up Bid” and the bidder making such bid, the “Back-Up Bidder”). The determination of the Successful Bid and Back-Up Bid by the Seller shall be final, subject to approval by the Bankruptcy Court.

The Seller will sell the Assets to the Successful Bidder pursuant to the terms of the successful bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

If, following the entry of the Sale Approval Order, the Successful Bidder fails to meet its obligations under the Terms & Conditions or fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the Debtor will submit an Order to the Bankruptcy Court approving the Back-Up Bid to be deemed the new Successful Bidder and shall be given the opportunity to consummate the transaction. In such case, the deposit of the former defaulting Successful Bidder shall be forfeited to the Seller and the Seller shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder to the extent permissible under the applicable purchase agreement and applicable law. Seller shall have the right, but not the obligation to compensate the Back-Up Bidder to leave its “hard” deposit on deposit until such time as the Successful Bidder consummates the sale transaction.

SALE HEARING

A hearing to approve the sale of the Assets to the Buyer or other Successful Bidder will be held on **May 10, 2022 at 10:00 a.m.** (prevailing Eastern Time) before the Honorable David S. Jones at the United States Bankruptcy Court for the Southern District of New York (the “Sale Hearing”). In light of the COVID-19 pandemic, pursuant to SDNY General Order M-543, all hearings will be conducted telephonically pending further order of this Court. This hearing shall take place virtually using *ZOOM for Government*. Parties that wish to appear at the hearing are required to register their appearance utilizing the Electronic Appearance Portal <https://ecf.nysb.uscourts.gov/cgi-bin/nysbAppearances.pl> located on the Court’s website. Parties are advised to check the Court Calendar the day before for updated call-in times.

FREE OF ANY AND ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES

All of the rights, title, and interests of the Debtor in and to the Assets, or any portion thereof, to be acquired will be sold, conveyed, transferred, and assigned free and clear of all Liens, Claims, Interests, and Encumbrances pursuant to Sections 363 and 365 of the Bankruptcy Code, such Liens, Claims, Interests, and Encumbrances to attach to the net proceeds of the sale of such Assets.